

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

VIA VADIS CONTROLLING GMBH,)
Vaterstettener Str. 5a)
85598 Baldham, Germany)
)
Petitioner)
) Civil Action No. _____
v.)
)
SKYPE, INC.)
3210 Porter Drive)
Palo Alto, California 94304)
)
and)
)
SKYPE COMMUNICATIONS SARL)
Rives de Clausen 23-29)
L-2165 Luxembourg)
)
and)
)
SKYPE GLOBAL SARL)
22/24 Boulevard Royal)
6e, étage, L-2449 Luxembourg)
)
and)
)
SKYPE SOFTWARE SARL)
15 rue Notre Dame)
L-2240 Luxembourg)
)
and)
)
SKYPE TECHNOLOGIES, SA)
Rives de Clausen 23-29)
L-2165 Luxembourg)
)
Respondents)
)

VIA VADIS CONTROLLING GMBH'S PETITION FOR DISCOVERY PURSUANT TO
28 U.S.C. § 1782

Petitioner Via Vadis Controlling GmbH (“Via Vadis”), by its undersigned attorneys, petitions this Court under 28 U.S.C. §1782 to order Skype, Inc. (“Skype”), Skype Communications S.à r.l. (“SkypeC”), Skype Global S.à r.l. (“SkypeG”), Skype Software S.à r.l. (“SkypeS”) and Skype Technologies, SA (SkypeT”) (collectively “Respondents”) to provide limited discovery needed to litigate more effectively Via Vadis’ civil patent infringement lawsuits pending in Germany and Luxembourg.

I. PARTIES

1. Petitioner Via Vadis is a corporation organized under the laws of Germany and has its principal place of business at Vaterstettener Str. 5a, Baldham, Germany.

2. Respondent Skype is a corporation organized and existing under the laws of the State of Delaware. On information and belief, Skype has its principal place of business at 3210 Porter Drive, Palo Alto, CA 94304, and is doing business in this judicial district.

3. Respondent SkypeC is a limited liability company organized and existing under the laws of Luxembourg. On information and belief, SkypeC has its principal place of business at Rives de Clausen 23-29, L-2165 Luxembourg, and is doing business in this judicial district.

4. Respondent SkypeS is a limited liability company organized and existing under the laws of Luxembourg. On information and belief, SkypeS has its principal place of business at 15 rue Notre Dame, L-2240 Luxembourg, and is doing business in this judicial district.

5. Respondent SkypeT is a limited liability company organized and existing under the laws of Luxembourg. On information and belief, SkypeT has its principal place of business at Rives de Clausen 23-29, L-2165 Luxembourg, and is doing business in this judicial district.

6. Respondent SkypeG is a limited liability company organized and existing under the laws of Luxembourg. On information and belief, SkypeG has its principal place of business at 22/24 Boulevard Royal, 6e, étage, L-2449 Luxembourg, and is doing business in this judicial district.

7. Each of the respondents is a defendant in a patent litigation matter currently pending before this court captioned as *Via Vadis, LLC v. Skype, Inc. et al*, Civil Action No. 11-507-RGA (the “U.S. Lawsuit”).

II. JURISDICTION

7. Jurisdiction is proper in this Court under 28 U.S.C. §1782 which provides, in pertinent part:

The district court of the district in which a person resides or is found may order him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal...The order may be made...upon the application of any interested person....

28 U.S.C. § 1782(a).

8. Respondent Skype resides in this district as it is a corporation organized and existing under the laws of the State of Delaware. The remaining respondents, SkypeC, SkypeG, SkypeS and SkypeT also meet the express elements of the statute as they are “found” in this district given the fact that they routinely do business in this judicial district. Moreover, each of the Respondents is subject to jurisdiction in this Court by virtue of being parties to the U.S. Lawsuit.

III. DISCOVERY REQUESTED

8. Via Vadis is the exclusive licensee of European Patent No. EP 1 151 591 (the “EP ‘591 patent”). The inventions claimed in the EP ‘591 patent are improved data access and

management methods for use in a computer system.

9. As the exclusive licensee of the EP '591 patent, Via Vadis has the right to sue for, and recover, damages and to seek and obtain injunctive relief for infringement of this patent.

10. Via Vadis has filed patent infringement lawsuits in Germany and Luxembourg against SkypeS alleging that SkypeS' peer-to-peer VOIP communications systems, methods, products and services infringe on Via Vadis' patent rights. Specifically, on January 21, 2011, Via Vadis filed a lawsuit with the District Court of Dusseldorf in Germany against SkypeS based on infringement of the EP '591 patent. A true and correct copy of the complaint in the German lawsuit is attached hereto as **Exhibit A**. A trial in this matter is scheduled for December 6, 2012. Via Vadis also filed a complaint based on infringement of the EP '591 patent in Luxembourg with the Tribunal d'arrondissement de et à Luxembourg. A true and correct copy of the complaint in the Luxembourg lawsuit is attached hereto as **Exhibit B**.

11. Via Vadis' claims in the German and Luxembourg lawsuits are based on respondent SkypeS' unauthorized, infringing manufacture, use, sale and/or offer for sale of its Skype peer-to-peer voice over internet protocol ("VOIP") communications system, methods, products and services.

12. Petitioner's German and Luxembourg lawsuits allege that SkypeS' Skype telecommunication services improperly practice each and every limitation of at least one claim of the EP '591 patent.

13. In order to effectively litigate these lawsuits pending in Germany and Luxembourg, it is critical that Via Vadis obtain the computer source code and related core technical documents underlying the Skype telecommunications services. The computer source code is highly relevant to the issues raised or intended to be raised by Via Vadis in the German

and Luxembourg actions. An examination of the computer source code would likely provide significant evidence as to whether the invention claimed in the EP '591 patent is present in Skype's telecommunications services. Via Vadis is filing this petition to seek this limited discovery.

WHEREFORE, for the foregoing reasons and for the reasons stated in the attached Memorandum of Law, which is adopted and incorporated herein by reference, Via Vadis Controlling GmbH requests that this Court exercise its jurisdiction under 28 U.S.C. § 1782, and enter an order compelling Respondents to produce the computer source code and related core technical documents underlying the Skype telecommunication services.

Respectfully submitted,

/s/ Daniel A. Griffith

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